



## STAFF REPORT

DATE: JANUARY 17, 2012  
TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: ROD FOSTER, CITY MANAGER  
PREPARED BY: AMER JAKHER, P.E. PUBLIC WORKS/UTILITIES SERVICE DIRECTOR  
SUBJECT: FIND BID NON-RESPONSIVE AND AWARD OF STREET SWEEPING MAINTENANCE AGREEMENT TO CANNON PACIFIC INC.

### RECOMMENDED ACTION

It is recommended that the City Council: 1) find Clean Sweep's bid non-responsive, and award a maintenance agreement for street sweeping services to Cannon Pacific Inc. for a one (1) year term at an amount not to exceed \$158,400; 2) authorize the City Manager to execute the City's standard maintenance agreement on behalf of the City with any non-substantive revisions approved by the City Attorney; and 3) authorize execution of Amendment No. 1 to Clean Street for temporary street sweeping services.

### GOAL STATEMENT

The proposed action will support the City's goal to maintain the quality and cleanliness of City streets, gutters and storm drains.

### BACKGROUND

Currently, street sweeping services are provided to all curbsides throughout the City once a month; all routes are swept either on the first or second week of the month. The only exceptions to this schedule are: 1) our City's downtown area which is swept three times a week; and 2) arterial streets, which are swept once monthly. Currently, these services are being provided by Clean Street Inc. on a temporary basis.

### ISSUES/ANALYSIS

In accordance with Colton Municipal Code (CMC) Section 3.08.110, Ordinance 0-12-03, the Public Works Department solicited and received proposals for street sweeping. Four (4) proposals were received from street sweeping companies in Southern California. The sealed bid opening took place on October 24, 2011, at 1:00 p.m. in the Corporate Yard Conference Room. The award of this agreement will provide City wide street sweeping services. The awarded agreement will allow for up to four renewable one year terms, with a Consumer Price Index adjustment for each renewed term.

The basis of award for the street sweeping maintenance contract was determined by the lowest overall total summation (Total Base Bid) of five different bid options outlined in the bid schedule. Bid schedule options are based on a twelve month period of service. This method allows for staff to decide what option would be economically feasible at the time of award.

The five different bid options included the following:

- Option A: Downtown three times a week, arterials once weekly and residential and commercial twice monthly.
- Option B: Every street, arterial and median once weekly
- Option C: Downtown once weekly, arterials once weekly, residential and commercial twice monthly, and medians once monthly.
- Option D: Every street, arterial and median once monthly.
- Option E: Every street and median twice monthly.

Staff has evaluated the options and would recommend the schedule as specified in "Option C." This schedule already has the needed "No Parking" signage posted for these routes and has been abided by community businesses and residents for the past five years.

Staff has reviewed each proposal received, and has reviewed the background, qualifications, and technical capabilities of the four companies. One bid, from Clean Sweep, although it was the apparent low bid, was deemed non-responsive for failure to provide all items/information required by the bid documents, including required references and required information on past experience. Based upon our review, staff recommends finding Clean Sweep's bid non-responsive and awarding a maintenance agreement for street sweeping services to Cannon Pacific Inc., as the lowest, responsive responsible and qualified bidder, in the amount of \$158,400, for services to be provided from February 1, 2012 to January 30, 2013.

**Bid Results:**

Company	Option A	Option B	Option C	Option D	Option E	Total Base Bid
Cannon Pacific Services	\$220,200.00	\$246,600.00	\$158,400.00	\$57,600.00	\$116,400.00	\$799,200.00
Athens Services	\$200,661.56	\$260,924.07	\$196,603.54	\$79,437.00	\$145,719.23	\$883,345.40
Clean Street	\$215,450.09	\$255,644.76	\$205,794.73	\$99,463.68	\$152,300.76	\$928,657.02
Clean Sweep	Non-Responsive					

During the formal bidding process, City wide street sweeping services were still necessary for sanitation and storm water compliance. In accordance with CMC Section 3.08.060 (A), staff

informally bid street sweeping services for a three-month period while staff formally bid the services. The City awarded a maintenance agreement to Clean Street Inc. for an amount not to exceed \$25,000. Based on the extensive evaluation and time requirement to ensure the bidders met the bid qualifications, the City requested Clean Street Inc. to provide additional temporary services. The additional time requested allows staff to finalize and award the street sweeping services based on the formal bidding process. The additional services require an amendment to the original agreement for additional funds in the amount of \$25,998 with a three-month extension to the agreement.

### **FISCAL IMPACTS**

Funds for street sweeping services are annually budgeted in the Storm Water Division Professional Service account 722-6150-8215-2350. For Fiscal Year 2011-12, the budgeted amount is \$220,000. As such, no additional approximation is needed to support the recommended action.

### **ALTERNATIVES**

1. Provide alternative direction to staff.

### **ATTACHMENTS**

Exhibit "A" Maintenance Agreement with Cannon Pacific Inc.  
Exhibit "B" Maintenance Amendment No. 1 with Clean Street Inc.

## EXHIBIT "A"

**CITY OF COLTON  
AGREEMENT FOR MAINTENANCE SERVICES**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 17th day of January, 2012 by and between the City of Colton, a municipal corporation of the State of California, located at 650 North La Cadena Drive, Colton, California 92324, County of San Bernardino, State of California, (hereinafter referred to as "City") and Cannon Pacific Inc., a CORPORATION with its principal place of business at 285 Pawnee Street, San Marcos, CA 92078 (hereinafter referred to as "Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**2. RECITALS.**

**2.1 Contractor.**

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing Street Sweeping Services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City.

**2.2 Project.**

City desires to engage Contractor to render such services for the CITY WIDE STREET SWEEPING SERVICES PROJECT ("Project") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Street Sweeping maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from February 1, 2012 to January 30, 2013, unless earlier terminated as provided herein. City and Contractor have an option to renew the

contract for an additional four, one (1) year terms. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### **3.2 Responsibilities of Contractor.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates Public Works Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates Lee Miller, President, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9 Insurance.

3.2.9.1 Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.9.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement

by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.9.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.



(C) Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(D) All Coverages. Each insurance policy required by this

Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.9.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.9.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.9.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.9.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or

lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.11 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### 3.2.12 Bonds.

3.2.12.1 Performance Bond. If specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.12.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "B" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.12.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without

limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.12.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed ONE HUNDRED FIFTY EIGHT THOUSAND FOUR HUNDRED DOLLARS AND ZERO CENTS (\$158,400.00) without written approval of City's Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**CONTRACTOR:**

Cannon Pacific Inc.  
285 Pawnee Street  
San Marcos, Ca 92078  
Attn: Lee Miller, President

**CITY:**

City of Colton  
650 North La Cadena Drive  
Colton, CA 92324  
Attn: Amer Jakher, Public Works Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.5 Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

3.5.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.5.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.9 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.11 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.15 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.17 Prohibited Interests. Contractor warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.19 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.20 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.21 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### **3.6 Subcontracting.**

3.6.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON NEXT PAGE]

**CITY OF COLTON**

**CANNON PACIFIC INC.**

By: \_\_\_\_\_  
Rod Foster  
City Manager

By: \_\_\_\_\_  
Lee Miller  
President

*Attest:*

\_\_\_\_\_  
Eileen C. Gomez  
City Clerk

*Approved as to Form:*

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

\_\_\_\_\_  
Risk Management



**EXHIBIT "A"**  
**SCOPE OF MAINTENANCE SERVICES**

**I. SCOPE OF WORK:**

1. The contractor is responsible to sweep every curb mile within the City of Colton. This includes all median curbs and cul-de-sacs within the sweeping schedule. Currently, the number of curb miles within the corporate limits of the City is approximately 258.75 curb miles. The stated number of curb miles may increase of the course of previously unincorporated areas into the City. The contractor is responsible to sweep all additional curb miles at the "per additional curb mile" rate quoted in the Price Proposal section of the bid. The Price Proposal section of the bid asks the contractor to break down their costs into sections, residential, downtown area and arterials. In order to give the contractor a more accurate idea of the scope of work, the following distances have been measured.
  - a. Total Curb Mile -----258.75
  - b. Residential Curb Mile-----167.8
  - c. Downtown Curb Mile-----7.73
  - d. Arterial Curb Mile-----75.22
  - e. Median Curb Mile-----8.0
2. The contractor shall perform 40 curb miles of special event sweeps "free-of-charge" for each contract year at the request of the City. These sweeps are not re-sweeps of an area not done properly but rather an additional sweep that is not part of the regular schedule. These may be used to clean before and after a parade, grand openings, city functions or others special events, or for any reason the City chooses.
3. The contractor shall perform 40 curb miles of inclement weather sweeps "free-of-charge" for each contract year at the request of the City. These sweeps are not re-sweeps of an area not done properly but rather an additional sweep that is not part of the regular schedule. They may be used to clean after a wind/storm event.

**II. TECHNICAL SPECIFICATIONS**

**1. General**

- a. For the purpose of this contract, Contractor shall utilize only approved alternative fueled sweepers.
- b. The contractor shall place a sign approved by the City, on the street sweeping equipment used in the performance of the work. Signs lettering shall be a minimum of six (6) inches high, visible from both side of the vehicle, and shall read "Any questions or comments please contact \_\_\_\_\_" (company name and phone number).
- c. The contractor shall make arrangements at his/her expense with the City of Colton Department of Utility Services for use of fire hydrants or other sources to obtain

recycled water necessary for the operation. Only recycled water shall be used unless otherwise authorized by the contract administrator.

- d. The contractor shall maintain an office staffed by a responsible representative for receipt of request and complaints. The office shall be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, not including approved holidays.
- e. The phone number to this office shall be toll free from within the City of Colton. The contractor must provide the City with an after-hours contact name and number to use in case of an emergency.
- f. The contractor shall provide cell phones to all sweeper operators so that contract administrator is able to directly communicate with sweeper operators until 4:30 p.m. each weekday. The contractor shall provide a list of all sweeper operators and their current cell phone numbers to the City on a monthly basis. The use of a handheld device will be required.

## **2. Sweeping Standards**

- a. Sweeping must be performed in accordance with accepted standards herein for routine and emergency municipal street cleaning.
- b. Sweepers used must be one of the following types: regenerative air, broom/brush sweeper, vacuum sweeper, or other which can be proven to be equally effective at removing fine particulate matter and sediment.
- c. Equipment shall control and remove dust from the surface being swept, and control airborne particles in compliance with existing AQMD Standards and the Clean Air Act.
- d. All Sweepers in conjunction with this contract will be required to follow current AQMD Rule 1186.1 for less polluting sweepers and any other applicable compliance requirements set forth by the regulatory agencies.
- e. When necessary for proper cleaning, contractors shall make more than one pass on a street, without extra charge.
- f. Contractor shall immediately respond when notified by the City to re-sweep unsatisfactory areas at no additional charge.
- g. Sweepers shall operate at speeds recommended by the manufacture for optimum sweeping (speeds must not exceed 7 miles per hour).
- h. No chemicals, including but not limited to chloride, nitrates, and chloroform, shall be used to enhance the cleaning of the street.

## **3. Scheduling**

- a. Contractor shall submit sweeping schedules to the City for approval 30 days prior to commencement of operations. Contractor shall also submit notice of any modifications to the schedules 30 days prior to commencement of the modified schedule. Schedules must be approved by the contract administrator.
  - 1. Under the condition that the street sweeping contract is awarded based on the City's current street sweeping schedule Contractor shall affirm the City's current street sweeping schedules and shall also submit notice if any modification to the current schedule is requested. Notice shall be submitted 30 days prior to commencement of the modified schedule. All modifications must be approved by contract administrator. The current street sweeping schedule shall be made available at the Pre-Bid Meeting.
- b. Sweeping in residential areas shall not commence prior to 700 a.m. and must be completed by 4:30 p.m. Sweeping in business areas shall be completed prior to 7:00 a.m.

- c. Sweeping schedule shall not conflict with the City's current trash pick-up disposal schedule. Schedules for trash pick-up will be available for the contractor who is selected. Sweeping schedules must be modified if the trash pick-up schedule changes.

#### **4. Disposal of Refuse**

- a. Contractor is responsible for collecting, transporting, and disposing of all waste at the appropriate disposal facilities in accordance with applicable federal, state, and local laws and regulations, including the Clean Water Act and the City's National Pollutant Discharge Elimination System (NPDES) program. **All cost for said disposal shall be paid by the contractor.**
- b. The City requires the contractor to use alternate disposal options such as reuse and recycling of applicable materials.
- c. Storage areas on streets or private property within the City of Colton will not be permitted unless prior approval is obtained from the contract administrator. If approval is obtained for storage of waste within the City, the approved facility shall be fully contained and not emit or allow runoff. The contractor will be responsible for the cost of any permits and any other fees that may arise from this activity.
- d. Discharging or disposal of liquid or solid waste, including leakage from sweepers, will not be permitted onto public or private property, streets, or storm drain systems.
- e. At no time will a hopper of a street sweeper be allowed to exceed capacity.
- f. The City Yard can be utilized for the storage of assigned street sweepers.

#### **5. EQUIPMENT MAINTENANCE**

- a. Contractor shall keep accurate records of maintenance and repairs on equipment used in this contract to comply with state, federal and local maintenance standards. Records shall be available at any time for the City to request.
- b. City shall have the right to perform periodic inspections of the equipment.
- c. Contractor shall replace worn parts as required and install broom of the appropriate weight. All adjustments and repairs shall be done in a timely manner.
- d. Contractor shall maintain proper brush adjustment, rotation rate, and sweeping pattern to maximize sweeping efficiency per manufacturer's recommendations
- e. Contractor shall periodically review maintenance and operation procedures to determine if procedures are being properly implemented.
- f. Contractor is responsible for all the cost associated with the maintenance of equipment.

#### **6. COMPLAINTS**

- a. All public complaints concerning street cleaning shall be brought to the attention of the City's contract administrator on an approved form within one hour of receiving the complaint. After-hour complaints shall be brought to the attention of the contracts administrator at 8:00 a.m. the following business day. Complaints will be investigated by the contractor and action will be taken to mitigate the cause of the complaint.
- b. Complaints brought to the contractor's attention shall be investigated and resolved by 5:00 p.m. the following business day.
- c. A standardized form, to be approved by the contract administrator, shall be completed for each complaint received by or referred to the contractor.

- d. Contractor shall be required to file a monthly report on all complaint on forms approved by the City.

## **7. HOLIDAY'S AND INCLEMENT WEATHER**

- a. During inclement weather which prevents adherence to the regular sweeping schedule for two or less days in a given week, the sweeping areas so affected by the weather shall be swept within five (5) days of the scheduled sweeping without interruption of the regular sweeping schedule. City's contract administrator reserves the right to determine what constitutes inclement weather. The contractor shall perform all extra work required by such inclement weather without additional charge, and shall provide the City with a schedule of when the makeup sweeping will be done.
- b. Sweeper will not provide street sweeping services during the following holidays: January 1, May 31, July 4, Labor Day, Thanksgiving, and December 25.
- c. In the event the contractor is prevented from completing the sweeping as provided in the schedule due to reasons other than inclement weather, they shall be required to complete the sweeping services within 2 days from the regularly scheduled sweeping day without interruption in the sweeping schedule.

## **8. BILLING**

- a. Billings shall be submitted monthly, and shall be based on one twelfth of the annual cost. Additional curb miles shall be billed at the rate quoted in the price proposal. Additional curb miles are to be billed only upon City approval, which must be obtained prior to work commencing.

## **9. REPORTS**

In addition to other data filed with the City of Colton, the contractor shall, on a monthly basis file reports with the City detailing the listed information for the previous month. The reports shall be submitted with the invoice for the previous month. Reports will entail the following for each monthly report:

- a. Street Sweeping Log: each sweeping area detailed by zone and description date swept, frequency, curb miles swept, impediments to effective cleaning and the amount of waste collected.
- b. Scheduled areas not done or not completed as scheduled, as shown on a tachometer and map, reasons, and the date and a time missed areas were swept.
- c. Complaints: quantity, detail of each complaint, actions taken, resolution.
- d. Monthly totals of waste collected, total weight, location of disposal, and cost of disposal to contractor.
- e. Monthly total of recycled material, weight, cost and location of recycling plant.
- f. Constant record of each sweeper's speed in mile per hour, hours of vehicle operation and hours of brush operation (this report only to be filed at the City's request).
- g. A report with the water usage shall be provided specifying water consumption on a daily basis.
- h. Failure to submit required reports with the invoice would result in delay of payment of invoice until such time that reports are submitted to the satisfaction of the City.

## **10. COMPLIANCE WITH LAWS-LIQUIDATED DAMAGES**

In addition to the requirements set forth in the Agreement, Contractor shall comply with all aspect of the City's NPDES permit. Should Contractor fail to comply with the City's NPDES permit, Contractor shall pay to the City, a sum, as liquidated damages, according to the following provisions.

- a. *Deliberate of Grossly Negligent Violations*: For each deliberate or grossly negligent act committed by Contractor that violates the City's NPDES permit Contractor shall pay to the City the sum of \$5,000 as liquidated damages and further reimburse City for any and all expenses, including staff costs, incurred by City as a result of said act. By way of example only, deliberate or grossly negligent acts may include, but are not limited to purging of liquid onto City streets or into catch basins, or incorrect disposal of refuse.
- b. *Negligent Violations*: For each negligent act committed by Contractor that violates the City's NPDES permit Contractor shall pay to City the sum of \$1,000 as liquidated damages and further reimburse City for any and all expenses, including staff costs, incurred by City as a result of said act. By way of example only, negligent act may include, but are not limited to improperly maintained (leaking) vehicles.

The City and Contractor agree and acknowledge that in the event of a violation of the City's NPDES permit by Contractor, the actual damage to the City as a result of said violation, in addition to the out-of-pocket cost to the City of addressing the violation, would be difficult if not impossible to ascertain with any degree of certainty. Therefore, the parties have negotiated this liquidated damages provision such that a sum as calculated as set forth above represents a reasonable sum to be paid to City by Contractor as and for liquidated damages for each violation of the City's NPDES permit committed by the Contractor. The parties have agreed upon the foregoing as a liquidated damages provision, and not as a penalty.

Contractor agrees to indemnify and hold harmless City and to pay any penalties, fines or levies imposed upon City or Contractor by any County, State or Federal Agency.

### **III. BIDDER QUALIFICATIONS**

#### **1. Contractor's Experience**

Bidder must have completed at least (2) two consecutive years of street sweeping services with a California municipal agency in the last five years.

#### **2. Contractor's Service Years**

Bidder must be in the business of performing street sweeping services, and have provided such services for eight (8) consecutive years, (5) five of those years must be in municipality sweeping services.

#### **3. Evidence of Good Standing**

Evidence that the proponent is in good standing in the State of California (no court judgments or bankruptcy filings in the last seven years). In the case of a corporation organized under the laws of any other state evidence that the proponent is licensed to do business in the State of California. Bidder must not have violations pertaining to labor, OSHA (serious violations), immigration, and employment laws.

#### **4. Equipment**

##### **A. Existing Inventory**

- a. Bidder must provide a detailed inventory of the bidder's equipment and accessories that will be used to fulfill this contract.
- b. Bidder must have adequate functioning sweeper vehicles and adequate functioning back-up sweeper vehicles.
- c. All sweeper vehicles shall be an alternative fuel type as required by the South Coast Air Quality Management District, Rule 1186.1. Alternative Fuel Sweeper means a sweeper with engines(s) that use compressed or liquefied natural gas, liquefied petroleum gas (propane, methanol, electricity or fuel cell. Hybrid-electric and dual-fuel technologies that use diesel fuel are not considered alternative-fuel technologies for the purposes of this rule. All sweeper vehicles must comply with all environmental laws including SCAQMD and CARB.
- d. All sweeper vehicles shall be in "good" condition as defined by Kelly Blue Book (latest edition). Sweeper vehicles shall be subject to inspection by Contract administrator. Contract administrator reserves the right to require any corrections deemed necessary to reflect acceptable service standards.
- e. Sweepers must have means to monitor speeds, hours of operation and brush operation for reporting purposes.
- f. Sweeper operators shall be equipped with cellular phones.
- g. Operators shall be required to answer or return any cell phone calls within 25 minutes. Operators must adhere to California Senate Bill 1613 requiring the use of hands free device when using a cell phone while driving.
- h. This inventory shall include a detailed list of the following for each piece of equipment: Sweepers
  - i. Type, model, and year of manufacture
  - ii. Type of sweeping equipment used (i.e. vacuum, mechanical broom, regenerative air, etc)
  - iii. Type and manufacture of recording device for hour of operation, miles per hour and brush operation monitoring.
  - iv. Total number of miles and hours (miles only, if vehicle is not equipped with an hour meter) each vehicle has been in service.
  - v. Anticipated remaining useful life as of the date of inventory.

##### **B. Leased Equipment**

All leased equipment shall be listed separately with the same detailed existing inventory listing from the previous section; the time remaining on each machine's lease and options for renewal, where applicable, shall be stated.

#### **5. Personnel Information**

The names and resumes of the principal officers, partners, and or officials shall be submitted. The names(s) and resume(s) of the individuals(s) who will be considered in responsible charge of the City of Colton street sweeping contract shall be clearly indicated.

The names and years of experienced of sweeper drivers and backup personnel with copies of State of California Department of Motor Vehicles records are also to be submitted. Sweeper drivers must have five years of experience in providing street sweeping driving for residential and commercial services and must be employed with the company for at least three (3) years.

Sweeper Operators DMV record shall not have 1 or more violation points in a 12 month period.

**EXHIBIT "B"**  
**SCHEDULE OF MAINTENANCE SERVICES**

February 1, 2012 through January 30, 2013



**EXHIBIT "C"**  
**COMPENSATION**

Compensation shall not exceed \$158,400.